

### **REMARKS**

As a result of the foregoing amendments, the rejections under 35 USC §112 and the objection to the specification have been rendered moot and should not be repeated.

Claim 30 has been amended based on the fourth paragraph on application page 8. New claim 75 finds basis in Example 1 (0.43% gum arabic plus 0.05% gelan gum) and Example 2 (0.48% gum arabic plus 0.05% gelan gum).

New claim 73 finds basis in the application in the fourth paragraph on page 8. New claim 74 finds basis in the tables in the examples (30.70% of a 75% dextrose solution contains 23.03% dextrose, and 52.06% of a 75% dextrose solution contains 39.05% dextrose, rounded to the same number of significant decimal places).

New claim 76 corresponds to the combination of claims 33 and 73, and new claims 77-80 are combinations of other claims but based on new claim 76.

In light of the cancellation of claim 62 and the claims dependent, the rejections of claims 31, 40, 41, 62-64 and 67-70 over Barrett in view of Koji, Igoe, and Lees; claims 61, 65, 66 and 71 over Barrett in view of Koji, Igoe and Willibald-Ettle; claims 31,62 and 65-71 Nakano in view of Applicant's Admitted Prior Art, Koji, Lees, Sault, and Igoe; claims 40, 41, 63 and 64 Nakano in view of Applicant's Admitted Prior Art, Koji, Lees, Sault, Igoe, and Barrett; and claim 61 over Nakano in view of Applicant's Admitted Prior Art, Koji, Lees, Sault, Igoe, and Willibald-Ettle, have all been rendered moot and should not be repeated.

The other rejections in the Office Action of August 19, 2011 under 35 USC § 103 were: claims 30, 36-39, and 44, 46-49 and 72 over Nakano in view of Applicants Admitted Prior Art, Koji, Igoe, and Sault; claim 45 over Nakano in view of Applicants Admitted Prior Art, Koji, Igoe, and Lees; claims 32 and 33 over Nakano in view of Applicants Admitted Prior Art, Koji, Igoe, and Barrett; claims 42, 43 and 50 over Nakano in view of Applicants Admitted Prior Art, Koji, Igoe, and Willibald-Ettle; claims 30, and 35 over "Hiroshi" (which is actually Nakano but cited using the individual's first name) in view of Applicants Admitted Prior Art, Koji, and Sault. It is respectfully submitted that none should be repeated.

The claimed invention addresses the technical problem of providing soft caramels in which the normally present gelatin is replaced by a non-animal substance that has properties such as low elasticity, high water dispersibility, good bodying and texturing properties, good mouth feel and no characteristic flavor. This has been accomplished by combining a soft caramel base which contains a polysaccharide hydrocolloid texturing agent, crystalline isomaltulose and a noncrystalline sweetener phase which is maltitol syrup or polydextrose, or a mixture thereof. Particular features of this soft caramel is that the only crystalline sweetener present is isomaltulose and the amount of polysaccharide hydrocolloid texturing agent is about 0.4 to 0.8% of the soft caramel base dry weight. Non-crystalline high intensity sweeteners can be present and the composition is sucrose-free. The claims under consideration recite that the composition is sucrose free.

It has been surprisingly established that in this combination, the selected polysaccharide hydrocolloid has properties that enable the complete replacement of

gelatin as texturing agent in soft caramels while retaining the special texture and consistency of the soft caramels. Moreover, the temperature stability of crystalline isomaltulose can be insufficient. See, e.g., "Coloration and Other Chemical Changes in the Manufacture of Palatinose Candy", and "Application for the Approval of Isomaltulose", both of record, which show that crystalline isomaltulose is heat-sensitive, shown by discoloration at temperatures over 100°C, such as used in preparation of the instant product (Example 1). Surprisingly, the temperature stability of crystalline isomaltulose is considerably improved by stabilizing effect of the polysaccharide hydrocolloids in the claimed combination. The soft caramel claimed in this case has a better structure, better rheology, better mouth and lead to better manufacturing processing. These aspects of the invention are unexpected and unpredictable.

Nakano relates to a soft candy which has moldability and viscoelasticity equivalent to soft candies prepared by heating despite having not been subjected to heat. The candy contains a crystalline saccharide-containing powder stock, non-crystalline saccharide and other ingredients. As the Office Action acknowledges on page 11, there is no teaching or suggestion in this reference of a crystalline sweetener phase in which isomaltulose is the only crystalline sweetener, a caramel which is sucrose free, and employment of a non-crystalline saccharide which is maltitol syrup or polydextrose (or both). To overcome these deficiencies, the rejection relies on additional materials. In addition to these deficiencies, it is respectfully pointed out that Nakano does not teach or suggest use of an amount of polysaccharide hydrocolloid texturing agent of about 0.4 to 0.8% of the soft caramel base dry weight.

Some of the polysaccharide hydrocolloids of claim 30 are included in the possible “thickening agents” listed in Nakano [0010]. However, Nakano teaches that these must be present in an amount of at least 2%, and preferably at least 3%. The reference explicitly teaches against any amount less than 2% of thickening agent(s). Since the amount of polysaccharide hydrocolloid in claim 30 is about 0.8% or less, one skilled in the art would not be lead to the claimed composition in view of Nakano. None of the other references proposed to be combined with Nakano provide the skilled person any reason not to follow Nakano’s admonition to use at least 2% (and more preferably, at least 3%) of these materials.

With respect to claims 32 and 33, it is noted that Nakano states that “some of them [the thickening agents] may be combined (sentence bridging pages 8-9 of translation) but never identifies which may be used in combination.

The other references which have been combined with Nakano have been discussed in earlier responses. Since none give the skilled person any reason to use polysaccharide hydrocolloid in an amount of about 0.4% to about 0.8%, in combination with a noncrystalline sweetener phase which is maltitol syrup or polydextrose, or a mixture thereof, and isomaltulose as the only crystalline sweetener present, it is not believed that there is any reason to burden the record with a repetition of that discussion. To the extent necessary, they are incorporated herein by reference.

In light of the foregoing considerations, it is respectfully submitted the foregoing rejections of claim 30 and the claims dependent thereon should be not be repeated.

In view of the above amendment and remarks, applicant believes the pending application is in condition for allowance. The early issuance of a Notice of Allowance is respectfully solicited.

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Respectfully submitted,

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